

Hedging Your Bets: The Winners and Losers of the Sports Betting Boom and What Can be Done About it

Zachary Mikuls

ABSTRACT

An increasing number of states are legalizing sports betting, and the once sharp divides between sports leagues and sportsbooks are beginning to blur. While this expansion has been lucrative for states, sports leagues, and sportsbooks; the dangers to bettors present in traditional gambling are even more prevalent among sports bettors, which skews heavily toward the younger demographic. This article will examine the growing interconnectedness of sports books, sports media groups, and sports leagues, how regulators can take action to reign in the industry, and the public health concerns the sports betting boom has led to. It will argue that the federal government should take steps to limit sports betting advertising and take a hard look at its options for ensuring fair business practices are being followed. Finally, this article examines the future of the industry and the long-term consequences for public health and what those solutions could look like.

1. INTRODUCTION

Sports gambling has exploded over the past five years since the landmark Supreme Court decision in *Murphy v. National Collegiate Athletic Association* which struck down the Professional and Amateur Sports Protection Act (PASPA), ending the federal prohibition on sports gambling.¹ For decades Nevada was the only state which permitted sports gambling and any wagers placed had to be done so within the state of Nevada due to the passage of the Federal Wire Act in 1961, a federal law that prohibited the use of wire communication in interstate sports betting.² As of the publication of this article, 38 states have legalized sports betting in some capacity, from mobile or online gambling to the traditional brick and mortar business like a casino.³ In 2018 the total sports gambling revenue in the United States was around \$430 million, in 2022 that number ballooned to \$7.5 billion.⁴ Sports leagues and networks have taken notice of the lucrative opportunity, advertising for sports gambling is present in every sports broadcast and gambling content appears daily on sports television shows.⁵ The growth of sports gambling has brought the once separate industries closer than ever thought possible. It has come with major risks and drawbacks. Gambling addiction rates are on the rise and show no signs of slowing down, with the rate of addiction being at an all-time high, and problem gambling rates rising as well.⁶ While industry momentum is very strong, there are still steps that can be taken to abate

¹ *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453 (2018).

² Matt Bonesteel, *Sports Betting Timeline: From Las Vegas to the Supreme Court*, THE WASH. POST (Aug. 29, 2022), <https://www.washingtonpost.com/sports/2022/08/29/history-of-sports-gambling>.

³ *Interactive U.S. Map: Sports Betting*, AMERICAN GAMING ASSOCIATION, <https://www.americangaming.org/research/state-gaming-map-mobile>, (Last Visited Jan. 31, 2024).

⁴ *Total Sports Revenue in the United States from 2018 to 2022*, STATISTA (Sept. 7, 2023), <https://www.statista.com/statistics/1126480/sports-betting-revenue-us>.

⁵ Tom Joyce, *The NFL is Running Way too Many Sports Betting Ads*, WASH. EXAMINER (Sept. 21, 2023), <https://www.washingtonexaminer.com/opinion/the-nfl-is-running-way-too-many-sports-betting-ads>.

⁶ Erica Sweeny, *'A Ticking Time Bomb': Gambling Addiction Is at an All-Time High (and It's About to get Worse)*, MONEY (Feb. 9, 2023), <https://money.com/gambling-addiction-all-time-high>.

some of the less savory aspects of this industry and ensure that consumers can trust the leagues they follow, the news they receive, and trust the sportsbooks they place their bets with.

Part II of this paper will lay out the background of legal sports betting, what it is and how it works, and the space that media companies take up in the sports world. Part III will address the growing connection between sports media outlets and sportsbooks and how this may affect bettors. Part IV will address potential solutions to the issues including government action and avenues for sports leagues and media outlets to prevent any unfair practices. Finally, Part V will look at the dangers of sports betting to public health and the impending consolidation of sportsbooks and an unfair marketplace.

II. BACKGROUND INFORMATION

a. What is Sports Gambling?

At its core sports gambling is placing a wager on a future outcome of a sporting event or season through an authorized sportsbook. A sportsbook is simply a company that accepts wagers on sporting events, usually registered with a state government.⁷ Bettors can place wagers on the “moneyline,” what team they think is going to win, “point spreads,” how much a team will win or lose by, “prop bets,” will a player reach a certain statistical marker, and finally “futures bets”, which are outcomes on awards, win totals, player stats at the end of a season.⁸ The odds on the bets are calculated by a third-party firm or a head oddsmaker who uses computer algorithms, rankings, and outside consultants to set odds as precise as possible.⁹ In the United States betting

⁷ Matt R. Webber, *Sportsbook: What It Is, History, Legality*, INVESTOPEDIA (Feb. 5, 2024), <https://www.investopedia.com/sportsbook-5217715>.

⁸ Kevin Davis, *Types of Sports Bets Analyzing the Different Sports Bet Types*, THE GAME DAY (Sept. 15, 2023), <https://thegameday.com/how-to-bet/bet-types>.

⁹ Tanner McGrath, *How Do Sports Betting Odds Work*, FORBES BETTING (July 28, 2022), <https://www.forbes.com/betting/sports-betting/how-sports-betting-odds-work>.

odds are represented as a negative or a positive followed by a number, for example -150.¹⁰ A plus sign means that a bet is not expected to win and a negative sign means a bet is favored to win.¹¹ The odds are based on if the bettor were to wager 100 dollars on the bet, so odds with a negative in front mean that a bettor must place that amount of money to win 100 dollars, when a positive is in front of the number represents how much the bettor would win if they placed 100 dollars on the bet and they won.¹²

Betting odds are not static, they can change effectively until the point of the wager's completion and can change for a variety of circumstances.¹³ The most common reason would be some change in circumstances before the wagered event takes place; for example if the betting odds are set on Tuesday for an NFL game that takes place the following Sunday and a star player gets hurt before Sunday then the odds or "line" for the game is going to change.¹⁴ The second reason odds change is when a large amount of money is wagered on one side of a bet, in response, the sportsbooks will change the odds to incentivize bettors to take a certain side in order to balance the sportsbook's bottom line.¹⁵ For example, if 85% of people are placing a bet on the Lakers +6 points, meaning the Lakers have to lose by less than six, then the sportsbook could move the line to Lakers +3 in order to get more people to bet on the other side of the bet.

What separates sports gambling from other traditional forms of gambling is that in traditional gambling, card games, roulette, slots, etc., are all about luck; yes, you can maximize your odds in certain ways but at the end of the day luck is the ultimate determinant if you win or lose. Sports gambling is different, sportsbooks have no influence on the outcome of sporting

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Mcgrath, *supra* note 9.

events and bettors can learn and analyze the game or event they are betting on and make informed, knowledgeable choices to increase their chances of winning. Additionally, sports gambling differs from traditional casino games like blackjack where bettors must play the cards they are dealt. Sports gamblers place their bets on either side of the bet completely of their own accord. The nature of sports gambling makes it so that outside influences, specifically sports media brands and reporters, have a large influence on how bettors place their wagers.

b. Sports Media Outlets and Their Influence

Most of the information available to sports bettors goes through two primary sources, sports media outlets such as ESPN, FOX, official league outlets, etc., and individual sports journalists who are generally the ones first reporting developments week in and week out in the leadup to games.¹⁶ This paper will highlight ESPN and its central role in North American sports. ESPN at its core is a sports broadcasting company, they have contracts with the big four sports leagues and college athletics with multiple broadcasts every single week.¹⁷ In the past few years, ESPN has shifted to more personality driven talk shows and sport-specific studio shows for NFL, MLB, NBA and college football and basketball.¹⁸ These programs usually include “personalities” hired by ESPN who comment on the games played most recently, evaluate player performance, and most importantly give predictions for upcoming games.¹⁹ ESPN averages around 600,000 viewers during its daily broadcasting and ESPN has a massive advantage in viewership over its close competitors.²⁰

¹⁶ Ben Strauss, *The Power and Peril of Being Adam Schefter, the Ultimate NFL Insider*, THE WASH. POST (July 12, 2022), <https://www.washingtonpost.com/sports/2022/07/12/adam-schefter-espn-nfl>.

¹⁷ *ESPN, Inc.*, BRITANNICA (last visited Nov. 29, 2023), <https://www.britannica.com/topic/ESPN-Inc>.

¹⁸ Stephen W. Dittmore, *How Athletic Departments Can Leverage ESPN's Shift Toward Personality Driven Content*, ATHLETIC DIRECTOR U (last visited, Nov. 29, 2023), <https://athleticdirector.com/articles/how-athletic-departments-can-leverage-espns-shift-toward-personality-driven-content>.

¹⁹ *Id.*

²⁰ Dave Nagle, *ESPN's Best First Quarter Viewership in Five years, up 40% in Prime Time*, ESPN PRESS ROOM (Mar. 31, 2022), <https://espnpressroom.com/us/press-releases/2022/03/espns-best-first-quarter-viewership-in-five->

ESPN clearly has a massive lead over its competitors in the sports media market when it comes to the primary sports betting market, which is the 18-22 demographic. A study conducted by the National Collegiate Athletic Association (NCAA) found that sports gambling is prevalent among this demographic, with 58% having engaged in at least one sports betting activity.²¹ Among students living on college campuses, 67% are bettors and tend to bet a high frequency.²² It is no surprise that ESPN is making moves to capitalize on this growing market. In 2019 ESPN announced a partnership with Caesars Entertainment to build an ESPN branded studio at one of Caesar's Casinos in Las Vegas to bring gambling content to television, digital and social media platforms.²³ ESPN hosts its popular program *The Daily Wager* which has steadily grown in popularity since launching in 2019, with ratings rising 10% year-over-year from September 2022 through September 2023.²⁴ This is not just a jump associated with the NFL season, which is the most bet on sport in the United States, but shows a consistent growth of viewership and presumably more gamblers as the program's ratings rose 15% through June of 2023, despite the United States' most bet on league being out of season.²⁵ The line between sports media and sports betting media is beginning to blur, point spreads and odds flash across the bottom of the screen on nearly every football game, and commentators will actively comment and joke about results of a game, angering bettors.²⁶

years-up-40-in-prime-time. (Describing in the target demo of adults 18-49, ESPN was up 23% in total day audience and led the second-place network by 74% . . . On the strength of the weekday studio show lineup, ESPN averaged 600,000 viewers from 8 a.m. – 7 p.m. ET, up 20% over 2021 and the best since 2017).

²¹Saquandra Heath, *Addressing Sports Wagering*, NCAA (May 24, 2023),

<https://www.ncaa.org/news/2023/5/24/media-center-ncaa-releases-sports-wagering-survey-data>.

²² *Id.*

²³ Frank Pallotta, *ESPN and Sports Media are Betting on Gambling Content*, CNN BUSINESS (May 14, 2019),

<https://www.cnn.com/2019/05/14/media/espn-caesars-gambling>.

²⁴ Todd Shriber, *'Daily Wager' Ratings Soar, but ESPN Reportedly Boots Host*, CASINO.ORG (July 10, 2023)

<https://www.casino.org/news/daily-wager-ratings-on-rising-according-to-espn>.

²⁵ *Id.*

²⁶ Mark Saxon, *Sports Broadcasters Asked to Roll with the Changes when it Comes to Gambling*, USBETS (Feb. 4, 2022), <https://www.usbets.com/sports-broadcasters-roll-with-gambling-changes>. (Describing Greg Papa, the radio play-by-play announcer for the San Francisco 49ers had this to say about sports gambling during broadcasts, "It's

c. Growth of Sports Gambling Advertising

Since the end of the federal prohibition on sports gambling in 2018, as more and more states have legalized sports gambling, advertising for sports gambling has exploded. In the first full year of expanded legal sports gambling, sportsbooks spent \$21.4 million on national television commercials alone.²⁷ That figure ballooned to \$278.4 million in 2022 and that volume is without considering spending on local television ads or other outlets such as websites, social media, radio, or podcasts.²⁸ To consumers, the change is obvious; it is an inevitability when watching professional sporting events that an advertisement from a sportsbook will play with the only restrictions on the number of advertisements being limits from professional leagues themselves.²⁹ For example, the NFL permits a maximum of six sports betting advertisements to be played throughout the course of a game.³⁰

A majority of these advertisements feature promotions which offer “risk free” or “bonus” bets to new customers, although the recent risk of litigation has prompted many sportsbooks to drop the “risk free” language from their promotions.³¹ These promotions are designed specifically to get new customers hooked much like a casino is designed around keeping you inside the casino.³² The growth of mobile apps has made sports gambling accessible to everyone living in a legalized state, with no need to go out to a casino with a sportsbook to place a bet – if

always been something we’ve been cognizant of, but for years it was kind of a hush-hush, giggle kind of thing . . . Now, it’s openly discussed and actually even formatted on television to make sure we talk about these points, and the segments are often sold to some sort of gambling venture.”).

²⁷David Purdum, *Sports Leagues Form Coalition to Promote Limits on Betting Ads*, ESPN (Apr. 19, 2023), https://www.espn.com/chalk/story/_/id/36232587/sports-league-form-coalition-promote-limits-betting-ads.

²⁸Daniel Kaplan, *Sports Gambling Ads are Everywhere. Should they be Restricted – or Even Banned?*, THE ATHLETIC (May 12, 2023), <https://theathletic.com/4496847/2023/05/12/sports-gambling-ads-restrictions>.

²⁹*Id.*

³⁰*Id.*

³¹Robert A. Fumerton, Anthony J. Dreyer, Karen M. Lent, *Litigation Risk for ‘Risk Free’ Sports Betting Promotions*, REUTERS (May 22, 2023), <https://www.reuters.com/legal/legalindustry/litigation-risk-risk-free-sports-betting-promotions-2023-05-22>.

³²Steven John, *9 Tricks Casinos Use to Keep You Spending Your Money*, BUSINESS INSIDER (June 9, 2019).

a consumer sees an advertisement, they can immediately download the app and sign up for an account in minutes.³³

The success of these advertisements is reflected in both the “handle” and revenue statistics of these sportsbook. The “handle” for a sportsbook is the amount of money wagered by bettors, which can be represented as a total sum of all bets or can be represented as a percentage wagered on each side of a bet.³⁴ In the month of January of 2019 the total “handle” for sportsbooks in the United States was just over one billion dollars; that figure has since ballooned to \$11.5 billion in January of 2023, an increase of over 10 billion dollars.³⁵ Revenue in January 2019 was just over 43 million dollars, represented as a percentage that is 4.3% of the total “handle”.³⁶ In January 2023 revenue was just over one billion dollars, which is 9.2% of the total “handle”.³⁷ The increase in revenue does not necessarily mean that sportsbooks are turning out massive profits. Most of the sportsbooks in the United States are not making a profit, the first sportsbook to report profitability in a single quarter was Fanduel, achieving the mark in quarter two of 2022.³⁸ Penn Entertainment became the first sportsbook to report quarter four profits last year, it is more difficult for these companies to post profits in the final months of the year because they spend so much money on advertising and promotions during the NFL season.³⁹

³³ *Opening a Betting Account*, BEGINNER’S BETTING GUIDE (last visited Nov. 29, 2023), <https://www.beginners-betting-guide.com/opening-a-betting-account>.

³⁴ Dan Santaromita, *What is the Handle in Sports Betting? What is Revenue?*, THE ATHLETIC (Jan. 27, 2023), <https://theathletic.com/2564627/2022/01/27/what-is-the-handle-in-sports-betting>.

³⁵ Eric Ramsey, *US Sports Betting Revenue & Handle*, LEGAL SPORTS REPORT (Oct. 6 2023), <https://www.legalsportsreport.com/sports-betting/revenue>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Sam McQuillan, *Fanduel is the First US Sportsbook to Turn a Profit*, ACTION NETWORK (Sept. 9, 2022), <https://www.actionnetwork.com/legal-online-sports-betting/fanduel-is-the-first-us-sportbook-to-turn-a-profit>.

³⁹ Contessa Brewer, *Penn’s Sports Betting Business Posts Head-Turning Fourth Quarter Profit*, CNBC (Feb. 2, 2023) <https://www.cnbc.com/2023/02/02/penn-sports-betting-fourth-quarter-profit.html>.

III. BLURRING THE LINES

a. ESPN Partnership with Penn Entertainment

On August 8th, 2023 ESPN announced a partnership with the U.S. gambling giant Penn Entertainment (“Penn”) to rebrand and relaunch Penn’s sportsbook as ESPN Bet.⁴⁰ Penn secured exclusive rights to the ESPN Bet trademark in the U.S. for a ten-year term with an optional extension of ten years if both parties agree.⁴¹ The details of the deal included Penn’s agreement to make \$1.5 billion in cash payments to ESPN over the initial ten-year term, exclusive promotional services on ESPN’s platforms including programming, content, and access to ESPN talent, and finally ESPN is granted \$500 million of warrants to purchase approximately 31.8 million common shares that will vest ratably over ten years in exchange for media and brand right provided by ESPN.⁴²

The keys in this deal are the exclusive promotional rights and the stock warrants. The issuing of stock warrants gives ESPN’s parent company Disney the right to buy the 31.8 million shares of Penn at the \$500 million share price point over the ten-year period with the warrants vesting at different times due to the ratable vesting system.⁴³ This means that during this ten-year period Disney will have the ability to buy Penn shares at the initial deal price, regardless of what the stock is currently trading at.⁴⁴ This incentivizes Disney, via ESPN, to maximize the share price of Penn over that ten-year period resulting in lucrative gains for them.

⁴⁰ Lillian Rizzo, *ESPN Launches Sportsbook in Partnership with Penn Entertainment*, CNBC (Aug. 8, 2023), <https://www.cnn.com/2023/08/08/espn-betting-sportsbook-launches-via-penn-entertainment-partnership.html>.

⁴¹ *PENN Entertainment and ESPN Enter into Long-Term Exclusive Strategic Alliance for U.S. Online Sports Betting*, BUSINESSWIRE (Aug. 8, 2023), <https://www.businesswire.com/news/home/20230808765627/en>.

⁴² *Id.*

⁴³ Robin Kavanaugh, *What are Stock Warrants and Why do Companies Offer Them?*, BUSINESS INSIDER (July 7, 2022), <https://www.businessinsider.com/personal-finance/stock-warrants>.

⁴⁴ *Id.*

b. The Danger to Bettors and the Sports World

Professional sports are no strangers to scandals involving betting. Dating back all the way to 1919 when the Chicago White Sox conspired with professional gamblers to fix the outcome of the World Series.⁴⁵ Retribution was swift and final, those involved in the conspiracy received lifetime bans from Major League Baseball and are barred from entering the Baseball Hall of Fame.⁴⁶ While game fixing by players has not been a major issue for any of the North American professional sports leagues in recent years, the leagues have been quick to hand down punishment for players betting on league games.⁴⁷ So far in 2023 alone the NFL has suspended ten players for violating the leagues gambling policies, many of these players were subsequently released by their teams and are not eligible for reinstatement to the league until their suspension is up, usually a full season.⁴⁸ The leagues have contractual enforcement methods against players betting and putting the validity of game outcomes into question, but what recourse do the leagues and consumers have against media conglomerates that could potentially work to influence bettors?

There are no confirmed cases of media outlets or figures purposefully withholding information or providing false information to consumers to influence betting outcomes. However, as sportsbooks and media outlets become more financially intertwined, such as the deal between ESPN and Penn, more scrutiny is going to be required to ensure fair and honest reporting practices. This past year one of the top reporters for NBA insider information, Shams Charania, reported in the hours leading up to the NBA draft that Scoot Henderson was “gaining

⁴⁵ Bill Lamb, *The Black Sox Scandal*, SOCIETY FOR AMERICAN BASEBALL RESEARCH (last viewed Mar. 3, 2024), <https://sabr.org/journal/article/the-black-sox-scandal>.

⁴⁶ *Id.*

⁴⁷ *List of NFL Players Suspended for Violating Gambling Policies*, THE ASSOCIATED PRESS (Aug. 25, 2023), <https://apnews.com/article/nfl-gambling-suspensions-0c31c118f637efa159fad75e7b949418>.

⁴⁸ *Id.*

serious momentum at No. 2 with the Charlotte Hornets.”⁴⁹ Charania is a writer for the New York Times’s Athletic but he is also a paid contributor to Fanduel’s television network as a regular panelist on its weekday NBA show,⁵⁰ Fanduel is the largest sportsbook in the nation by market share at 45.1%.⁵¹ At the time of Charania’s tweet a different player, Brandon Miller, was favored to be picked second but after the tweet Henderson became the odds on favorite to be the No. 2 pick.⁵² On Fanduel his odds moved to -380, making him a clear favorite to be picked second.⁵³ Brandon Miller ended up going second, as many believed before Charania’s tweet, and there are no allegations of misconduct by any parties involved, but the fact that this is a conversation makes it clear that changes need to be made within the industry.⁵⁴ In summation, Fanduel made money off the losing bets after Charania, who has financial ties to Fanduel, made a tweet that, from the outside perspective, was seemingly patently false.

IV. SOLUTIONS

a. Preventative Government Measures

Sports betting is undeniably interstate commerce, in that sportsbooks operate in multiple states, advertisements for sports betting are run on national television broadcasts, the leagues themselves span states and countries, and many bettors travel across state lines to place wagers. Take Missouri for example, a state without legalized sports betting. Both of Missouri’s most populous cities, Kansas City and Saint Louis, border states with legalized sports betting, Kansas and Illinois respectively. Missouri citizens cross state lines every day to place wagers. As it

⁴⁹ Ben Strauss, *FanDuel Makes Betting Lines. FanDuel’s Sham Charania Moves Them.*, THE WASH. POST (June 23, 2023), <https://www.washingtonpost.com/sports/2023/06/23/shams-charania-fanduel-draft>.

⁵⁰ *Id.*

⁵¹ Ed Dixon, *‘We Can’t Think of Anything That’s Moved this Quickly’: What’s the State of the US Sports Betting Market in 2023?*, SPORTSPROMEDIA (Sept. 21, 2023), <https://www.sportspromedia.com/insights/analysis/us-sports-betting-market-2023-legal-states-revenue-handle-aga-fanduel-draftkingsnfl>.

⁵² Rizzo, *supra*, note 40.

⁵³ *Id.*

⁵⁴ *Id.*

stands currently, all gambling is regulated by state gaming commissions or control boards with limited federal oversight.⁵⁵ Federal legislation to set uniform standards for each state and establish a federal regulatory body overseeing sports betting.

In 2018 a draft of a bill proposed by Senators Chuck Schumer and Orrin Hatch was released.⁵⁶ The bill had several provisions appropriate to highlight here. Two provisions of the bill effectively make it so the only way a state can legalize sports betting is through the federal guideline.⁵⁷ The bill makes it illegal for any person to accept a bet on any sport, but creates an exception for states; if a state wants to legalize sports gambling, it can submit a proposed law to the United States Attorney General, who will decide if the law complies with federal standards.⁵⁸ Another important provision from this bill would be the short-term requirement that sportsbooks only use data from properly license sources, such as the specific sports leagues and organizations or entities that are expressly authorized by the organizations to provide data.⁵⁹ The question becomes is this commandeering and therefore unconstitutional.⁶⁰ Commandeering was the reason that PASPA was struck down in *Murphy v. NCAA* and there are no other laws that the state has to submit to the federal government for approval.⁶¹ The federal government has the power to regulate sports gambling but this bill takes it a step further and would be unlikely to stand up to constitutional challenges.⁶²

⁵⁵ *Gaming Regulatory Overview*, SEC. AND EXCH.COMM'N, <https://www.sec.gov/Archives/edgar/data/858339/000119312512115625/d268435dex993.htm>, (last viewed Mar. 3, 2024).

⁵⁶ ESPN News Services, *U.S. Senators Charles Schumer , Orrin Hatch introduce federal sports gambling bill*, ESPN (Dec. 19, 2018), https://www.espn.com/chalk/story/_/id/25573273/senators-chuck-schumer-orrin-hatch-introduce-federal-sports-gambling-bill.

⁵⁷ Jarred M Stindt, *Never Tell Me the Odds: The Importance of Federal Legislation in Sports Gambling Regulation* THE J. OF CORP. L. (2021) https://jcl.law.uiowa.edu/sites/jcl.law.uiowa.edu/files/2021-08/Stindt_Final_Web.pdf

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

Congress has the power to regulate interstate gambling through the Commerce Clause and as stated before there has been legislation introduced by Congress to tackle emerging issues related to interstate gambling through the Wire Act.⁶³ The unique challenges sports gambling creates by merging the multi-billion dollar sports industry with the commercial gambling industry make this an appropriate situation where the government could create a federal gaming commission to oversee not only sports gambling but also the rest of interstate gambling. It would be a difficult task no doubt, with heavy pushback from the gambling industry, but it is possible with compromise. Congress could compromise with the lobbying efforts from the gambling industry by creating the agency and simultaneously legalizing online sports betting at the federal level.⁶⁴

If the government would rather focus on preventing the negative effects of sports gambling rather than ensuring confidence and fairness in the industry, then regulating the advertising practices of sportsbook is another viable solution. Sports betting has been legal in Europe for much longer than the United States, and European nations have begun to crack down on permissible advertising for sports betting.⁶⁵ The United Kingdom has banned betting advertisements featuring former sports stars and restricted sportsbooks from including team uniforms in their advertising; the Netherlands has prohibited all advertising of online gambling; and Belgium has moved to reduce the number of advertisements in circulation.⁶⁶ The extreme solutions of banning all advertising is unrealistic, but regulating advertising to exclude celebrity

⁶³ Bonesteel, *supra* note 2.

⁶⁴ *A Guide to the Rulemaking Process*, OFFICE OF THE FED. REG., https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf, (last viewed Mar. 3. 2024).

⁶⁵ Joshua Cohen, *As Ads For Sports Betting Proliferate in U.S., Europe Clamps Down Due To Potential Risk Of Compulsive Gambling*, FORBES (May 9, 2023), <https://www.forbes.com/sites/joshuacohen/2023/05/09/as-ads-for-sports-betting-proliferate-in-us-europe-clamps-down-due-to-potential-risk-of-compulsive-gambling/?sh=2fb5e00d4d2e>.

⁶⁶ *Id.*

and former professional athletes from appearing in advertisements is a realistic solution that was introduced earlier this year in the House of Representatives.⁶⁷ This is not unfamiliar territory for American regulators, cigarette advertisements were banned from all broadcast media in 1971 with the purpose of dissuading young people to take up the destructive habit.⁶⁸ As it stands, there is not the same public push for regulation now as there was back in 1971; but as time goes on, it gets easier to gamble, more young people start to do it, and negative impacts becoming more apparent, we could see more vocal support for legislation.⁶⁹

Another advertising regulation would be banning the “risk free” or “bonus bets” promotions for first time bettors. These advertisements are designed to incentivize those who would otherwise not gamble due to various reasons (lack of a desire to risk money being the primary motivator) to start betting. The danger this poses is the addictive nature of gambling, the fusion of passionate sports fans and highly addictive, gamified, ease of access services with no risk the first time can be enough to get someone to continue betting long term.⁷⁰ Some states have already taken action: New Jersey for example has set advertising standards that state, “Advertisements shall not be misleading in any way, such as using slogans portraying “guaranteed wins” or “risk free” bets, particularly when patrons are required to deposit their own funds into a wagering account[.]”⁷¹ New Jersey also included promotional wagering

⁶⁷ Matthew Waters, *US Rep. Tonko Wants End to Sports Betting Ads ‘Predatory’ Tactics*, LEGAL SPORTS REP. (Feb. 15, 2023), <https://www.legalsportsreport.com/102941/us-rep-tonko-wants-to-end-predatory-tactics-sports-betting-ads>.

⁶⁸ Gideon Doron, *How Smoking Increased When TV Advertising of Cigarettes Was Banned*, AM. ENTER. INST. (Apr. 5, 1979), <https://www.aei.org/articles/how-smoking-increased-when-tv-advertising-of-cigarettes-was-banned/#:~:text=In%201970%20Congress%20passed%20an,media%20effective%20January%202%2C%201971>.

⁶⁹ *Id.*

⁷⁰ Nerilee Hing et al, *Understanding Persuasive Attributes of Sports Betting Advertisements: A Conjoint Analysis of Selected Elements*, NAT’L LIBR. OF MED. (October 12, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6034954>.

⁷¹ *Best Practices*, NEW JERSEY GOVERNOR’S OFF. (2023), <https://www.nj.gov/oag/ge/docs/BestPractices/AdvertisingBestPractices.pdf>.

requirements that restricted advertisements offering “unrealistic” promotions, which would be promotions requiring a high initial deposit to get far less in return from the sportsbook.⁷²

Regulators are enabled to make these restrictions, but a complete ban on promotions could give rise to first amendment claims.⁷³

b. Preventative Industry Measures

If the sports industry and gambling industry want to avoid government action, there are a number of self-imposed regulatory options that can be taken. The first step would be greater transparency and scrutiny imposed on sports insiders and teams themselves regarding player health and other information that would be pertinent to oddsmakers and bettors. As discussed earlier in this paper, the information is vital to oddsmakers and bettors with the accuracy of these reports effecting every aspect of gambling from the lines set by oddsmakers and the decisions of bettors.⁷⁴ The most feasible option would be for the sports leagues and sportsbooks to come to agreements that betting lines can only be set based on official reports from teams and the leagues themselves.⁷⁵ Making the betting lines completely based on official league information makes it more fair to bettors to be on the same information level as the sportsbooks and prevents lines from being set based on “insider” information that may be unavailable or difficult to find for bettors.⁷⁶

⁷² *Id.*

⁷³ *Judiciary Committee Reviews Predatory Marketing Law Following Constitutional Challenge*, ACLU (Oct. 15, 2009), <https://www.aclu.org/press-releases/judiciary-committee-reviews-predatory-marketing-law-following-constitutional>.

⁷⁴ McGrath, *supra* note 9.

⁷⁵ *2023 NFL Injury Report*, NFL, (Last accessed November 18, 2023), <https://www.nfl.com/injuries>, (this is an example of an official league injury report, the leagues themselves have rules about injury reporting to promote the fairness of the game from week to week).

⁷⁶ Mike Florio, *Report: ESPN Will Keep its Insiders “Far Away” from Gambling-Focused Programs*, NBC SPORTS (Aug. 9, 2023), <https://www.nbcsports.com/nfl/profootballtalk/rumor-mill/news/report-espn-will-keep-its-insiders-far-away-from-gambling-focused-programs>.

The leagues have a vested interest in avoiding accusations of rigging games or influencing the outcomes to benefit the sportsbooks. The leagues have strict gambling policies for players and league personnel. For example, the NFL prohibits players from betting on any league game or placing any type of wager while on league property, and league personnel are prohibited from placing a bet on any other sport.⁷⁷ These strict guidelines can be enough to ease fans' minds that players are not fixing games or unduly influencing outcomes, but it may not be enough for fans to completely dismiss the idea that sportsbooks are having an influence on the games. The issue is that revenue is at an all-time high across the four major leagues and shows no sign of slowing down.⁷⁸ So why would the leagues change everything if revenue keeps going up? The majority of league revenue comes from the lucrative broadcasting rights the leagues have sold to networks and streaming services.⁷⁹ Two-thirds of the NFL's total revenue comes from their media contracts, which total \$20.4 billion; this revenue is split evenly between the 32 teams.⁸⁰ These media contracts give broadcasters a fair amount of leverage over the leagues: if the broadcasters are concerned about viewership dropping because of scandal or they do not want to air a product with such a close relationship to gambling, then they could force the

⁷⁷ *Gambling Policy for NFL Personnel*, NFL (2018),

<https://nflcommunications.com/Documents/2018%20Policies/2018%20Gambling%20Policy%20-%20FINAL.pdf>.

⁷⁸ R.J. Anderson, *MLB Sets New Record for League Revenue in 2022, Pulling in Estimated \$10.8 billion*, CBS SPORTS (Jan. 11, 2023), <https://www.cbssports.com/mlb/news/mlb-sets-new-record-for-league-revenue-in-2022-pulling-in-estimated-10-8-billion-per-report>. (stating MLB's 2022 Revenue was around \$10.9 billion breaking the previous high); Sean Shapiro, *NHL Revenues Reach Record High Thanks to Jump in Sponsorship, Licensing Deals*, THE ATHLETIC (June 25, 2022), <https://theathletic.com/3382650/2022/06/25/nhl-revenues-reach-record-high-thanks-to-jump-in-sponsorship-licensing-deals> (stating the NHL's 2022 Revenue was around \$5.3 billion); Ed Dixon, *NBA Reveals Record US \$10 Bn Revenue for 2021/22*, SPORTS PRO (July 25, 2022), <https://www.sportspromedia.com/finance-investment/finances/nba-revenue-2021-22-season-adam-silver>, (stating NBA's 2022 Revenue was around \$10 billion); Christina Gough, *Total Revenue of the NFL 2001-2022*, STATISTA (Sept. 5, 2023), https://www.statista.com/statistics/193457/total-league-revenue-of-the-nfl-since-2005_ (stating NFL's 2022 Revenue was \$18.6 billion, surpassing the 2021 mark of \$17.19 billion).

⁷⁹ Ryan Beasley, *Sports Media Contracts: Evaluating Revenue to Leagues and Universities*, BLEACHER REPORT (Dec. 29, 2010), <https://bleacherreport.com/articles/556188-sports-media-contracts-evaluating-revenue-to-leagues-and-universities>.

⁸⁰ *Id.*

leagues to make some changes. Is this likely? Probably not. There would have to be a significant shift in the consumer consensus regarding the leagues, which likely have to come in the form of a major scandal. Until then, there will likely be no voluntary movement because a new revenue source has emerged via partnerships with sportsbooks. The leagues have already entered official partnerships with sportsbooks: FanDuel and the NFL,⁸¹ DraftKings and FanDuel with the NBA.⁸² This is the core of the problem, without outside pressure, whether that is from consumers, business partners, or the government, there is not going to be any self-regulation of the industry between the leagues and sportsbooks. There is simply too much money to be made between all the parties involved, and the people who are going to take all the negative effects of this sports gambling boom are consumers.

C. Punishment for Violations

While there is currently no government body dedicated solely to overseeing the gambling industry, such as a national gaming control board, the responsibility for investigating and prosecuting gaming fraud falls to the Federal Trade Commission (FTC).⁸³ Section 5(a) of the FTC Act states that “unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful.”⁸⁴ “Deceptive” practices are defined as “involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.”⁸⁵ The hypothetical scenario described earlier, ESPN purposefully pushing untrue stories in order to influence bettors, would likely fall under this section of the act. Media

⁸¹ *The National Football League Announces Official Sports Betting Partners*, FANDUEL (Apr. 15, 2021), <https://press.fanduel.com/press-releases/press-release-details/2021/THE-NATIONAL-FOOTBALL-LEAGUE-ANNOUNCES-OFFICIAL-SPORTS-BETTING-PARTNERS/default.aspx>.

⁸² *DraftKings, FanDuel become NBA’s co-official sports betting partners*, NBA (Nov. 4, 2021), www.nba.com/news/draftkings-fanduel-become-nbas-co-official-sports-betting-partners.

⁸³ *A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM’N (May, 2021), <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

⁸⁴ *Id.*

⁸⁵ *Id.*

companies would likely argue that the stories they release and the sources they receive them from are not gambling advice, but the reality is that it does not matter if it is disclosed as a “report” or “rumor”, bettors and oddsmakers still rely on this information to place wagers and set lines.

V. STOPPING THE MOMENTUM

a. Promoting a Fairer Marketplace

The government has not only a public health and consumer protection motivation to reshape the industry, but a fair competition interest as well. The big three sportsbooks, FanDuel, BetMGM, and Draftkings, are dominating the industry both in revenue and advertising spending. The investment is paying off, the big three are dominating in market share, with Draftkings being used by 62% of regular bettors, FanDuel being used by 56%, and BetMGM being used by 36%.⁸⁶ The smaller sportsbooks are struggling to keep up and the nature of the industry requires a high volume of bettors in order to turn a profit. If usage continues on the current track then we are going to start seeing smaller firms go out of business and a consolidation at the top of the larger sportsbooks. The United Kingdom has already experienced this, as mergers and acquisitions of smaller firms by the larger firms continues to cut down on competition and has consolidated more of the market at the top, with the largest firms dominating.⁸⁷ As more states legalize sports betting, consumers are going to go to the sportsbooks that they have seen advertisements from for the past four years from consuming sports media. By regulating advertisements, the

⁸⁶ *FanDuel and DraftKings Dominate Online Sportsbook Use*, VARIETY (Jan. 11, 2023), <https://variety.com/2023/sports/tech/fanduel-and-draftkings-dominate-online-sportsbook-use-betmgm-1235480154>.

⁸⁷ *Biggest Betting Companies and Bookmakers in the UK*, BETTINGWEBSITES, <https://www.bettingwebsites.org.uk/companies/#biggest-mergers> (last viewed Mar. 3, 2024).

government can promote competition and preserve a fairer market for smaller firms and new firms in the industry.

Revenue for sportsbooks is inherently limited, only retaining revenue on 8% of the total bets placed.⁸⁸ Due to the limited nature of returns, sportsbooks are going to diversify and move into the media space. DraftKings has taken major steps to diversify their sports content portfolio, launching a video streaming service this past year to compete with rival FanDuel's own television network that launched last September.⁸⁹ The move is not only to create new revenue streams but also is an effort to reach out and capture other demographics other than the most common sports bettors, the 18-34 male demographic.⁹⁰ Expanding into more traditional media outlets expands the reach to a more diverse consumer base, particularly among women and the older generations. This is the logical move for the sportsbooks, but the legacy media outlets which have cozied up to sportsbooks in recent years may regret their assistance in growing this industry. There is a lot of overlap between sports bettors and viewers of legacy media organizations like ESPN, and, if trends continue, we could see that younger generation of sports bettors begin to shift away from the programming offered by these companies to the media outlets of the sportsbooks themselves. The real danger for legacy media is if the sportsbook media operations and sportsbooks themselves grow large enough they could begin to compete with the likes of ESPN, Amazon, CBS, and others for the highly lucrative television contracts that the leagues hand out. In an already overly saturated sports media landscape, the introduction of shorter form content and podcasts has made it difficult for legacy media operations to keep up

⁸⁸ Chris Altruda, *Legal US Sports Betting Revenue, Handle and Tax Totals Since PASPA Repeal*, SPORTS HANDLE (Nov. 22, 2023), <https://sportshandle.com/sports-betting-revenue>.

⁸⁹ Chris Katje, *DraftKings Pushes Diversification Efforts With Streaming Video Service: What Investors Should Know*, BENZIGA (Apr. 27, 2023), <https://www.benziga.com/general/entertainment/23/04/32052138/draftkings-pushes-diversification-efforts-with-streaming-video-service-what-investors-shoul>.

⁹⁰ *Industry Demographics*, FANTASY SPORTS & GAMING ASSOC., <https://thefsga.org/industry-demographics>, (last viewed November 30, 2023).

with the content blitz from smaller creators who also advertise the sportsbooks on their platforms where sportsbooks dominate in advertising.⁹¹ To counter this, the legacy sports media groups need to continue to diversify with more investment in social media and new content streams that are popular with the younger demographics.⁹²

b. Promoting Public Health

Promoting a fairer, more competitive marketplace is good for consumers in the end, but this gambling industry is destructive, with sports betting presenting a unique danger. Modern sports betting is available whenever a bettor wants, they can log into their account, place a wager on a game that day or in the future and log off all within five minutes.⁹³ Not having to travel to a casino and access sportsbooks via the internet makes it so people who have never gone to a casino nor had a desire to, can still place wagers.⁹⁴ What differentiates sports gambling from traditional gambling is that young people are at a far higher risk to develop a gambling addiction.⁹⁵ A Seton Hall survey of 16 to 25-year-olds in New Jersey found that 70 percent of them see at least four gambling advertisements a week on social media alone.⁹⁶ It is not just young adults of legal age who are placing wagers, teens below the legal age are finding ways to place bets, whether that is through using their parents information to register for an account or parents willingly giving their account information to their kids and operating as a de facto

⁹¹ IGB Editorial Team, *How Much do Sportsbooks Spend on Marketing and Will it Lead Them to Profit?*, IGB, (Jan. 6, 2023), <https://igamingbusiness.com/marketing-affiliates/how-much-do-sportsbooks-spend-on-marketing-and-will-it-lead-them-to-profit>.

⁹² Khoros Staff, *ESPN: How the Worldwide Leader In Sports Stays Social*, KHOROS (June 19, 2013), <https://khoros.com/blog/how-espn-stays-social>.

⁹³ *A Review of Sports Wagering & Gambling Addiction Studies Executive Summary*, NAT'L COUNCIL ON PROBLEM GAMBLING, (2018), https://www.ncpgambling.org/wp-content/uploads/2020/01/Sports-gambling_NCPGLitRvwExecSummary.pdf.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Maxwell Strachan, *Teens Are Developing 'Severe Gambling Problems' as Online Betting Surges*, VICE (Oct. 11, 2023), <https://www.vice.com/en/article/4a37mp/teens-are-developing-severe-gambling-problems-as-online-betting-surges>.

bookie.⁹⁷ Since legalizing sports betting in 2018 New Jersey's gambling helpline has seen a 225 percent rise in calls with about 45 percent of those calls being related to online gambling and 35 percent coming from people 25 and under or their parents.⁹⁸ Another differentiating aspect is the frequency at which sports bettors place wagers compared to traditional gamblers.⁹⁹ Three-fourths of sports bettors bet at a high frequency, high frequency being once a week or more, compared to only 30% of traditional gamblers.¹⁰⁰ Clearly there is a correlation and clear risk of addiction between young people and sports betting, but there are steps that can be taken to mitigate these risks.

The lack of education about the dangers of gambling and how to identify problem gambling is a key contributor to the rise of gambling addiction among young people. When the United States was struggling with youth drug abuse, the government acted and established the D.A.R.E. program in schools to combat it.¹⁰¹ By educating young people about the dangers and signs of drug addiction the government was at least able to mitigate some of the issues associated with youth drug abuse.¹⁰² A similar program could be implemented in our schools to educate our young people about the dangers and signs of problem gambling. Whether it is an official program modeled after D.A.R.E. or an addition to students' health classes, educating highschoolers to deter them from gambling or how to gamble responsibly when they reach a legal age would have long term benefits for the public health. For college students, who are of legal age to gamble, universities should provide resources for students who believe they may

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Jeffrey Deverensky and Ken Winters, *A Review of Sports Wagering & Gambling Addiction Studies Executive Summary*, NAT'L COUNCIL ON PROBLEM GAMBLING (Fall 2018), <https://www.nj.gov/oag/ge/2023news/PrevalenceReport2023Final.pdf>.

¹⁰⁰ *Id.*

¹⁰¹ *About*, D.A.R.E. AMERICA, (Last Visited November 5, 2023), <https://dare.org/about>.

¹⁰² *Id.*

have a gambling problem or believe a friend may have a problem. Providing a support structure for students through their student health services can provide a localized, more personal approach as opposed to the seemingly impersonal nature of a gambling addiction hotline. Students would be more likely to seek help and would receive more effective treatment. Adding gambling to a university's addiction resource center and treating it the same as drug or alcohol addiction could help to slow the spread of gambling addiction among young people, particularly young men.

VI. CONCLUSION

We have entered a new era of legalized gambling, and the government needs to adapt to meet the unique challenges that this rapidly growing industry presents. Protecting bettors from possibly inaccurate information provided by media outlets with financial interests in the performance of sportsbooks is an important regulatory role the government needs to play. Further, the government should work to limit the influence of sportsbook advertising through various regulatory impositions on the industry, via congressional action, or by creating a national gaming commission to oversee the blossoming industry. The public health effects of sports gambling will continue to worsen, especially among young people, due to the prevalence of advertisements and cultural popularity. Steps need to be taken to ensure the negative impact of sports betting is mitigated through limits and content restrictions on advertising and active efforts to promote problem gambling treatment. Finally, if this industry continues to operate in the way it has for the past five years, we are going to see a consolidation at the top with the few larger firms dominating the industry and a lack of competition in the industry. Through limits on bonus promotions the larger sportsbooks put out, the government can prevent consolidation by promoting a fairer marketplace. This is a new industry with many difficult questions to answer

and little legal guidance to go on. Fixing the problems this industry presents will take creativity and willingness on lawmakers to work together to reign in this industry, but I am confident that effective action will be taken to address them.